

STATEMENT OF THE CGIAR CENTRES REGARDING IMPLEMENTATION OF THE AGREEMENTS BETWEEN THE CENTRES AND THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

The Centres of the Consultative Group on International Agricultural Research warmly welcome the signing of Agreements with the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture in regard to the *ex situ* collections described in Article 15 of the Treaty. With the signing of these Agreements, the Centres commit themselves to supporting and implementing the Treaty, and in particular, to working with the international community to build a strong and effective Multilateral System.

The Centres note that, with the adoption of the Standard Material Transfer Agreement (SMTA) by the Governing Body at its first Meeting, the stage is now set for the full implementation of the Multilateral System. The Centres will apply the SMTA, as approved by the Governing Body, for all transfers of Annex 1 plant genetic resources for food and agriculture (PGRFA) as from 1 January 2007. As stipulated by the Treaty, for non-Annex 1 materials, the Centres will continue to apply the Material Transfer Agreement (MTA) currently in use until it is amended by the Governing Body at its second Session.

This statement clarifies the Centres' common understanding of certain provisions of the Agreements and indicates some actions that the Centres will be taking to implement them.

With respect to Article 2 of the Agreements dealing with the rights and obligations of the Parties:

Non-Contracting Parties

It is understood that nothing in Article 2 of the Agreement will prevent the Centres from making available PGRFA held by it to non-Contracting Parties. The Centres will use the SMTA for distributions of Annex 1 PGRFA to non-Contracting Parties, and the Material Transfer Agreement (MTA) currently in use until it is amended by the Governing Body at its second Session for transfers of non-Annex 1 PGRFA. Centres will also apply the conditions of Article 2(b)(ii) to the return of samples of plant genetic resources to non-Contracting Parties.

Availability of PGRFA for cultivation

It is also understood that nothing in Article 2 will prevent the Centres from making PGRFA from the Multilateral System directly available to farmers or others for cultivation, as is the current practice, whether this is unimproved or improved PGRFA.

Compliance (Article 2 (b) (iv))

When Centres have reasonable grounds to believe that a recipient has violated the terms of a MTA, it will undertake the following actions in response to the perceived violation, in addition to any dispute resolution mechanisms set up under the approved MTA:

1. The Centre will request a written explanation. Upon failure to receive a satisfactory and timely explanation from the recipient, the Centre will notify the recipient that a violation is thought to have occurred and request the recipient to conform to the requirements set out in the MTA.
2. When the Centre continues to have reasonable grounds to believe that a violation of the provisions of the MTA has occurred, it will promptly inform the Governing Body of the Treaty through its Secretariat and IPGRI of the perceived violation and any follow-up action. Where the violation is with respect to the provisions on intellectual property rights, the Centre will notify the intellectual property rights-granting authority in the relevant country of the possibility that the MTA has been violated, and bring to their attention the fact that the grant of intellectual property rights may, therefore, have been inappropriate in the case of the material obtained from the Centre.
3. In regard to the above, the Centres will work in close cooperation with the Secretariat of the Governing Body of the Treaty.
4. Reports from the Centres concerning perceived violations of the MTA will be presented to the Governing Body at its regular sessions, through IPGRI, on the actions taken in accordance with 1 and 2 above.

The procedures described above will also be applied in respect of violations or perceived violations of SMTAs relating to PGRFA listed in Annex 1 of the Treaty.

Obligations of Centres to make plant genetic resources for food and agriculture available (Article 2 (a) and (b))

Under the terms of this provision, the Centres “undertake to make plant genetic resources for food and agriculture available for the purpose of utilization and conservation for research, breeding and training for food and agriculture”. It is implicit in this undertaking that users will make reasonable requests for these purposes, and that the undertaking of the Centres in this regard would not, as under their previous agreements with FAO, extend to the fulfilment of unreasonable requests.

For example, sound management practices as well as practical or even biological constraints (such as seed availability or the health status of a sample) may at times limit the ability of centres to provide plant genetic resources for food and agriculture for the purposes spelled out above. It is understood that Centres will have to use some discretion in determining the size and number of samples to be provided at any given time to a particular recipient. Centres may not be able to distribute seed or other materials immediately when such distributions would reduce stocks below accepted

levels for conservation purposes, or when the request is for such a number of samples or quantity of a particular accession as to make it financially or technically impossible for the Centre to meet the request in full, or make it impossible for the Centre to meet requests from others. In such cases, the Centre may ask that the recipient cover all or part of the costs of multiplying the relevant accessions. In cases of limited supplies, immediate availability of materials cannot be guaranteed. Such availability will follow a process of multiplication. Recipients might be advised that they may need to undertake their own seed multiplication when existing sample sizes are small (such as in the case with many accessions of wild relatives) or when demand for a particular sample exceeds supply.

In particular, multiplying woody species accessions and supplying materials of vegetatively propagated species can involve very time-consuming and expensive procedures. While Centres endeavour to supply materials free of cost, in such circumstances it would be unreasonable to expect that Centres could guarantee unlimited quantities or immediate availability of all germplasm. At their discretion, Centres may request that users cover all or part of the costs involved in multiplication.

In filling requests for material for conservation purposes alone, users are invited to note the Global Plan of Action's objectives of "safeguarding as much existing unique and valuable diversity as possible in *ex situ* collections," while reducing "unnecessary and unplanned redundancy in current programmes."

In cases when a Centre cannot fully or immediately meet a request, the Centre will enter into a discussion with the requesting entity to develop and agree upon a plan and schedule for the supply of materials. This process might establish an agreed list of accessions to which priority would be given.

Centres cannot distribute samples that do not meet health or quarantine standards, or whose transfer could pose the danger of a spread of pests or disease. In distributing samples, the Centres will comply with all relevant international and national legislation and regulations regarding phytosanitary, biosafety and other relevant standards and procedures.

With respect to acceptance of the SMTA:

The Centres welcome the clarification in the SMTA that the parties to the SMTA may choose to signify their acceptance of the SMTA in the "click-wrap" and/or "shrink-wrap" form. While the footnote to Article 1.2 of the SMTA provides that the insertion of the name and address of the Provider and Recipient is not required ("applicable") for shrink-wrap and click-wrap SMTAs, the Centres wish it to be known that, in the interests of transparency and greater enforceability of the SMTAs, they will in practice, on a voluntary basis, be including this information in click-wrap agreements, (the insertions will be generated electronically) and in shrink-wrap agreements that accompany transfers of ordered material.

Centro Internacional de Agricultura Tropical (CIAT)
Centro Internacional de Mejoramiento de Maíz y Trigo (CIMMYT)
Centro Internacional de la Papa (CIP)
International Center for Agricultural Research in the Dry Areas (ICARDA)
International Crops Research Institute for the Semi-Arid Tropics (ICRISAT)
International Institute of Tropical Agriculture (IITA)
International Livestock Research Institute (ILRI)
International Plant Genetic Resources Institute (IPGRI)
International Rice Research Institute (IRRI)
The Africa Rice Center (WARDA)
World Agroforestry Centre (ICRAF)